Strong

# TRANSCRIPT OF RECORD.

## SUPREME COURT OF THE UNITED STATES.

No. ~~8.~~ 218

SAMUEL P. BROWN, PLAINTIFF IN ERROR,

vs.

JOHN M. JOLLY, CASHIER, ETC.

IN ERROR TO THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED DECEMBER 20, 1870.

Dec. 1870

# SUPREME COURT OF THE UNITED STATES.

## No. 433.

SAMUEL P. BROWN, PLAINTIFF IN ERROR,

vs.

JOHN M. JOLLY, CASHIER, ETC.

IN ERROR TO THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

INDEX.


| | Original. | Print. |
|---|---|---|
| Writ of error | 2 | 1 |
| Citation | 2 | 1 |
| Declaration. Copy of note and protest | 3 | 1 |
| Summons to answer and return | 6 | 3 |
| First amended declaration and protest | 7 | 3 |
| Defendant's pleas | 10 | 4 |
| Joinder in issue | 11 | 5 |
| Second amended declaration and protest | 12 | 5 |
| Affidavit of defendant for continuance | 15 | 6 |
| Plaintiff's bill of exceptions | 17 | 7 |
| Deposition of J. M. Jolly | 17 | 7 |
| A. L. Grimes | 20 | 8 |
| Defendant's bill of exceptions | 29 | 12 |
| Deposition of R. H. Rowland | 29 | 12 |
| Verdict of jury | 35 | 13 |
| Motion for new trial | 36 | 14 |
| Decree of general term | 38 | 14 |
| Appeal bond to Supreme Court United States | 39 | 14 |
| Clerk's certificate | 40 | 15 |

2 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the chief justice and justices of the supreme court of the District of Columbia, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is in the said court before you, between John M. Jolly, cashier, &c., plaintiff, and Samuel P. Brown, defendant, a manifest error hath happened, to the great damage of the said defendant as by his complaint appears; and it being fit that the error, if any hath happened, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf; therefore you are hereby commanded, if judgment be therein given, under your seal, distinctly and eponly, to send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the Honorable S. P. Chase, Chief Justice of the United States, this 16th day of May, in the year of our Lord 1870, and of the independence of the United States the 94th year.

[SEAL.] R. J. MEIGS, *Clerk.*

DISTRICT OF COLUMBIA, *to wit:*

To JOHN M. JOLLY, cashier, &c.

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the supreme court of the District of Columbia, wherein Samuel P. Brown is plaintiff and you are defendant, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected so that speedy justice be done the parties in that behalf.

Witness D. K. Cartter, chief justice of the said supreme court of the District of Columbia.

D. K. CARTTER,
*Ch'f Justice.*

Allowed.

Service acknowledged.

BARTLEY & STANTON.

(Indorsed:) Filed 16 May, 1870.

3 *Declaration.—Filed Sept. 2d, 1869.*

In the supreme court of the District of Columbia, the 31st day of August, 1869.

JOHN M. JOLLEY, CASHIER, PLAINTIFF,
*vs.*
SAMUEL P. BROWN, DEFENDANT. } At law. No. 6086.

The plaintiff sues the defendant, for that the said defendant, on the

24th day of June, 1869, by his promissory note of the date, now over due, promised thirty days after the date thereof to pay to the order of A. L. Grimes eighteen hundred and ninety-eight $\frac{02}{100}$ dollars at the said defendant's office, cor. 15th st. and New York avenue, in Washington, D. C., for value received; and the said A. L. Grimes endorsed the said note to the plaintiff, and the said note was duly presented for payment and was dishonored and protested, whereof the defendant had due notice but did not pay the same.

4 And the plaintiff claims the said sum of eighteen hundred and ninety-eight dollars and two cents with interest from the 27th day of July, 1869, with the costs of protest and the costs of this suit.

BARTLEY & STANTON,
*Att'ys for the Plaintiff.*

The defendant is to plead hereto on or before the first special term of the court occurring twenty days after service hereof, otherwise judgment.

BARTLEY & STANTON,
*Att'ys for Plaintiff.*

*Protest.*

[95-cent stamp.]

[$1,898$\frac{02}{100}$.] WASHINGTON, *June* 24, 1869.

Thirty days after date I promise to pay to the order of A. L. Grimes eighteen hundred and ninety-eight $\frac{02}{100}$ dollars at my office, cor. 15th st. & New York avenue, value received.

S. P. BROWN.

(Endorsed:)
Pay J. M. Jolly, cash. or order.

A. L. GRIMES.

(Erased:) Pay W. S. Huntington, C'r, or order, for collection, acc't Richland Nat'l Bank.

J. M. JOLLEY, *Cas.*

DISTRICT OF COLUMBIA,
*Washington County, sct:*

5 Be it known that, on the 27th day of July, 1869, I, William E. Howard, notary public, by lawful authority duly commissioned and sworn, dwelling in the county and district aforesaid, at the request of the First National Bank of Washington, presented at the maker's office, cor. 15th st. & New York avenue, the original note whereof the above is a true copy, and demanded there payment of the sum of money in the said note specified whereunto I was answered by his son: Will not pay on account of the conditions under which the note was given not having been complied with.

Therefore, I, the said notary, at the request aforesaid, have protested, and by these presents do solemnly protest against the drawer and endorsers of the said note, and all others whom it doth or may concern, for all costs, exchange, reëxchange, charges, damages and interest, suffered and to be suffered *and to be suffered* for want of payment.

In testimony whereof I have hereunto set my hand and affixed my seal notarial, this twenty-seventh day of July, 1869.

[SEAL.] W. E. HOWARD,
*Notary Public.*

On the same evening I mailed written notices of protest for the endorsers to Jno. M. Jolley, cashier, Mansfield, Ohio.

6 *Summons to answer.—Issued Sept. 2d, 1869.*

In the supreme court of the District of Columbia, the 2d day of September, 1869.

JOHN M. JOLLEY, CASHIER, PL'FF,
*vs.*
SAMUEL P. BROWN, DEF'T. } At law. No. 6086.

The President of the United States to the defendant, greeting:

You are hereby commanded to appear in this court on the first day of its special term, occurring 20 days after service of this writ on you, to answer the plaintiff's suit, and show why he should not have judgment against you for the cause of action stated in his declaration.

Witness D. K. Cartter, chief justice.

R. J. MEIGS, *Clerk.*

BARTLEY & STANTON.

NOTE.—The special terms of the court commence on the first Tuesday of every month except May, in which month they commence on the third Monday, and August, in which month there is no term of the court.

*Marshal's return.*

Served copies of the declaration, notice to plead, and this summons on the defendant, the 13th day of Sept. 1869.

A. SHARP,
*Marshal.*

7 *Amended declaration.—Filed Sept. 28, 1869.*

In the supreme court of the District of Columbia.

JOHN M. JOLLEY, CASHIER, &C.,
*vs.*
SAMUEL P. BROWN. } No. 6086.

The plaintiff, by consent of the defendant, amends his declaration by adding the following count:

For that also the said defendant, on the 24th day of June, 1869, by another promissory note of that date, promised sixty days thereafter to pay to the order of A. L. Grimes, eighteen hundred and ninety-eight $\frac{02}{100}$ dollars at his, the said defendant's office, cor. 15th street and New York avenue, in Washington, D. C., value received, and the said note was dishonored and protested, of all which the defendant had due notice; but did not pay the said note or any part thereof.

And the plaintiff claims the said sum of eighteen hundred and ninety-eight dollars and 2 cents in the first count mentioned, with interest as in the first count stated, and also the further sum of eighteen
8 hundred and ninety-eight dollars and 2 cents, in this count mentioned, with interest from the 26th day of Aug't, 1869, together with costs of protest on both notes, and also the costs of this suit.

BARTLEY & STANTON,
*For Plaintiff.*

The above count as an amendment is filed by consent of parties, to save the costs of an additional suit, and the defendant agrees to plead at the term commencing on the 3d Monday in October, 1869.

NATH'L WILSON,
*Att'y for Def't.*

WASHINGTON, *Sept. 28th*, 1869.

*Protest.*

[95-cent stamp.]

$1,898 $\frac{02}{100}$.] WASHINGTON, *June* 24, 1869.

Sixty days after date I promise to pay to the order of A. L. Grimes' eighteen hundred & ninety-eight $\frac{02}{100}$ dollars, at my office, cor. 15th st. & New York ave., value received.

S. P. BROWN.

(Endorsed:) Pay J. M. Jolley, cash., or order.

A. L. GRIMES.

(Erased:)
Pay W. S. Huntington, cash., or order, for collection, acc't Richland Nat'l Bank.

JNO. M. JOLLEY, *Cash.*

9 DISTRICT OF COLUMBIA, *Washington County, sct:*

Be it known that on the 26th day of Aug't, 1869, I, William E. Howard, notary public, by lawful authority duly commissioned and sworn, dwelling in the county and district aforesaid, at the request of the First National Bank of Washington, presented at the office of the maker, cor. 15th st. and New York ave., the original note whereof the above is a true copy, and demanded there payment of the sum of money in the said note specified, whereunto I was answered by the maker: I will not pay, as conditions under which it was given have not been complied with.

Therefore, I, the said notary, at the request aforesaid, have protested, and by these presents do solemnly protest against the drawer and endorsers of the said note, and all others whom it doth or may concern, for all costs, exchange, reëxchange, charges, damages, and interest, suffered and to be suffered for want of payment thereof.

In testimony whereof I have hereunto set my hand and affixed my seal notarial, this twenty-sixth day of August, 1869.

[SEAL.] W. E. HOWARD,
*Notary Public.*

On the same evening I mailed written notices of protest for the endorsers, to Jno. M. Jolly, cashier, Mansfield, Ohio.

10 *Defendant's pleas.—Filed* 8 *Oct.*, 1869.

In the supreme court of the District of Columbia.

JOHN M. JOLLEY, CASHIER,
*vs.*
SAM'L P. BROWN. } At law, No. 6086.

The defendant says that he never promised as alleged in the first count of said plaintiff's declaration.

And the defendant says that he never promised as alleged in the second count of the said plaintiff's declaration.

And for a further plea to the said first and second counts of said declaration, the defendant says that said notes are without consideration and void, and were taken by said plaintiff without consideration, and with notice of said want of consideration.

And for a further plea to the said first and second counts of said declaration, the defendant says that the making of said notes was procured by false and fraudulent representations; of all of which
11 the plaintiff had notice at the time of receiving said notes.

NATH'L WILSON,
*Att'y for Def't.*

*Joinder in issue.—Filed Oct. 20th*, 1869.

In the supreme court of the District of Columbia.

JOHN M. JOLLEY, CASH'R,
*vs.*
SAM'L P. BROWN. } At law. No. 6086.

The plaintiff joins issue upon all the defendant's pleas in this case.

BARTLEY & STANTON,
*For the Plaintiff.*

12 *Amended declaration, (3d count.)—Filed 8th Jan'y*, 1870.

In the supreme court of the District of Columbia, the 7th day of Jan'y, 1870.

JNO. M. JOLLEY, CASHIER, PLAINTIFF,
*vs.*
S. P. BROWN, DEFENDANT. } At law. 6086.

By agreement, the plaintiff files his third count, as follows:

3d. For that also on the 24th day of June, 1869, the said defendant by his promissory note, now overdue, promised ninety days after date to pay to the order of Sarah Jamison, eight hundred and ninety-eight dollars and one cent, at his office, corner 15th street and New York avenue, Washington, D. C., for value received; and the said Sarah Jamison endorsed said note to A. L. Grimes, and the said A. L. Grimes endorsed the said note to the plaintiff; and the said note was duly presented for payment and was dishonored and protested, whereof the defendant had due notice, but did not pay the same.

13 And the plaintiff claims the said sum of $898 $\frac{01}{100}$ with interest from the 25th Sept., 1869, with costs of protest and the costs of this suit, together with the sums claimed in the 1st and 2d counts.

BARTLEY & STANTON,
*Attorneys for Plaintiff.*

It is agreed for the purpose of saving costs of a separate suit that this count may be filed, and that the case shall be fixed for trial on the 1st Monday of January, 1870.

NATH'L WILSON,
*Att'y for Def't.*

*Protest.*

[45-ct. stamp.]

$898 $\frac{01}{100}$.] WASHINGTON, *June* 24, 1869.

Ninety days after date, I promise to pay to the order of Sarah Jamison, eight hundred & ninety-eight $\frac{01}{100}$ dollars, at my office, cor. 15th st. & New York avenue. Value received.

S. P. BROWN.

(Erased:) Indorsed: Pay W. S. Huntington, C'r, or order, for collection, acc't Richland Nat'l Bank.

JNO. M. JOLLEY, *Cash'r.*

(Indorsed:)

SARAH JAMISON.
A. L. GRIMES.

14 *Protest.*

DISTRICT OF COLUMBIA,
*Washington County, sct:*

Be it known, that on the 25th day of September, 1869, I, William E. Howard, notary public, by lawful authority duly commissioned and sworn, dwelling in the county and district aforesaid, at the request of the First National Bank of Washington, presented at the maker's place of business, (cor. 15th st. & New York ave.,) the original note whereof the above is a true copy and demanded there payment of the sum of money in the said note specified, whereunto I was answered: Will not pay it, as the conditions under which it was given have not been complied with.

Therefore, I, the said notary, at the request aforesaid have protested, and by these presents do solemnly protest, against the drawer and endorsers of said note, and all others whom it doth or may concern, for all costs, exchange, reëxchange, charges, damages and interest, suffered and to be suffered for want of payment thereof.

In testimony whereof I have hereunto set my hand and affixed my seal notarial, this twenty-fifth day of September, 1869.

[SEAL.] W. E. HOWARD, *Notary Public.*

On the same evening, I mailed written notices of protest for the indorsers to Jno. M. Jolley, cashier, Mansfield, Ohio.

15 *Affidavit of defendant for continuance.*

JOLLEY, CASH'R,
*vs.*
S. P. BROWN. } 6086. At law.

Be it remembered that on this 17th day of March, 1870, before the subscriber, clerk of the supreme court of Dist. Columbia, personally appeared S. P. Brown, who being first duly sworn deposes and says that he cannot safely proceed to trial in the above-entitled case in which he is the party defendant, because of the absence of one A. M. White, a material, competent, and proper witness by whom he expects to prove that the notes upon which this suit is brought were given by said de-

fendant in the settlement of an account between the defendant and one Jamison, and made payable to the payee at the request of said Jamison; that said settlement was afterwards found to be erroneous, and said defendant was compelled to pay the amount of said notes to said White; that said notes were given by said Jamison to the president of the bank of which the plaintiff is cashier, in payment or part payment of an indebtedness from said Jamison to the said president and to said
16 bank, and that the president of said bank admitted to said White, that he at the time of receiving said notes, and said bank at the time the same were discounted, knew the particulars of the settlement between said Brown and said Jamison, and that they the said bank and the president thereof held collateral security for said indebtedness.

That said White resides in the city of Philadelphia, and has heretofore agreed with said defendant that he would appear as a witness in this case when requested so to do by the defendant.

That when this case was fixed for trial on the 18th inst., this defendant immediately addressed a letter to said White, requesting his attendance on the day named; that the defendant has since learned that said White is not and has not for some time past been in Philadelphia, but is in the State of New Jersey; that he has within two days past sent from New York, through a friend of said White, word to said White, requesting him to be in attendance to-day, and expected that he would be here this morning, and that he has no doubt that he will be able to obtain and secure the presence here of said White within ten days of this date.

S. P. BROWN.

17 *Plaintiff's bill of exceptions.*

In the supreme court of the District of Columbia.

J. M. JOLLY, CASHIER, PLAINTIFF,
*vs.*
SAM. P. BROWN, DEFENDANT. } 6086. At law.

Upon the trial of this case, the plaintiff to maintain the issue upon his part joined, offered in evidence the depositions of J. M. Jolly and A. L. Grimes, as follows:

Depositions of witnesses, taken before me, S. E. Jenner, a notary public in and for the county of Richland, and State of Ohio, on this 24th day of March, A. D. 1870, between the hours of 8 o'clock a. m. and 6 o'clock p. m., at the law office of Jenner and Jenner, in the city of Mansfield, in said county of Richland, pursuant to the annexed notice, and by consent of the parties as expressed in said notice hereto annexed, to be read in behalf of the defendants in an action pending in the United States Supreme Court, within and for the District of Columbia, in which John M. Jolly, cashier, is plaintiff, and Samuel P. Brown is defendant.

18 JOHN M. JOLLY of lawful age, being first duly sworn, deposes as follows:

Question 1st. Are you the plaintiff in this suit; and if so, in what capacity do you sue?

Ans. I am the plaintiff in the capacity of cashier of the Richland National Bank of Mansfield, Ohio.

Ques. 2. State when the notes in suit were discounted, and for whom?

Ans. On the 3rd day of July, 1869, for A. L. Grimes, individually.

Ques. 3. At the time said notes were discounted, was Uriah Jamison indebted to said bank? If so, state the amount and character of his indebtedness, and what security for the payment of the same said bank then held or now holds, and whether the same is sufficient to secure the payment of said indebtedness.

Ans. At that time the bank held a note against Mr. Jamison for $1,133 76, secured by individual endorsers, making it abundantly secure.

Ques. 4. Were said notes or either of them used or received in payment of said indebtedness.

Ans. They were not.

Ques. 5. State what you know in relation to the matter inquired
19 of in the 13, 14, 15, 16, 17 & 18 interrogatories addressed to A. L. Grimes, and answer said questions so far as you can.

Ans. I never saw Mr. White; had no knowledge as to how the notes were obtained; I had no knowledge that the amount or value of the notes was claimed by Mr. White; I had no knowledge at the time, nor have I at this time, of any demand made by said White of said defendant of the amount of said notes; I gave no information to any other officer of the bank at the time of the discount; but since that time may have stated to the directors of the bank that I understood the notes were received in a settlement between Brown and Jamison. This bank holds no claim against Mr. Jamison at this time, except the note referred to in my answer to question three.

Questions by pl'ff.:

Ques. 1. Who is the legal holder of these notes?

Ans. The notes were endorsed to me as cashier. This makes me, in person, as cashier, the holder of the notes; the bank owns the equitable interest in the notes, but I am the actual holder of the notes for the benefit of the bank, the notes having been made payable to
20 me as cashier, and never transferred to the bank by me. The back of the notes show all the transfers made.

JOHN M. JOLLEY.

*Deposition of A. L. Grimes.*

A. L. GRIMES of lawful age, being first duly sworn, deposes as follows:

Ques. 1. State your name, age, residence, and occupation.

Ans. My name is A. L. Grimes; my age is 57 years; residence, Mansfield, Ohio, and my occupation, a banker.

Ques. 2. Are you the payee of the notes in suit in this case, or of either of them?

Ans. Two of the notes were made payable originally to me, but were by me negotiated and endorsed to J. M. Jolley, as cashier of the Richland National Bank of Mansfield, Ohio.

Ques. 3. Upon what consideration were said notes made as between you and the maker?

Ans. The transactions, which made the consideration, was this: Uriah Jamison and wife, bought of me real estate, upon which they owed me more than six thousand dollars. His family was occupying it and had been for years, and had promised payment from time to time.

21 Jamison informed me personally and by letter that he had Government vouchers to collect; and that, when they were paid, he would be able to pay for the property. From time to time he informed me of the progress he was making on a claim for one White, stating that it was certain to be paid soon. On my return from New England, on the evening of the 2nd of July, 1869, I found Mr. Jamison here; on the morning of the 3rd of July, 1869, he handed me these two notes, made by S. P. Brown in my favor, stating, at the time, that Mr. Brown had assisted him some in collecting this White claim, and had received the money, and that he was a friend of his and desired to use the money for a short time, and that he had taken these notes as a favor to Brown; that they would be paid without fail when they become due; that Brown was a responsible man and certain to pay, and referred me to Jay Cook' & Co. Believing this, I took the notes of him instead of the money, and had them discounted at the Richland National Bank the same day, for my individual use and benefit.

Qu's. 4. When and from whom did you receive said notes?

22 Ans. From Uriah Jamison, as stated in answer to question No. 3.

Qu's. 5. Were you, at the time of receiving the same, and have you since been, and are you now the president of the bank of which the plaintiff is cashier?

Ans. Yes.

Ques. 6. If said notes were received by you from Uriah Jamison directly or indirectly, state whether said Jamison was indebted to you or to said bank; and if so, state the amount and character of said indebtedness; and if by written instrument or instruments, annex a copy of such instrument to your answer.

Ans. The notes were received, as above stated, from Mr. Jamison, and he was indebted to me, as above stated, on account of his wife, on the sale of property. To her and her said husband, on this sale I gave a title bond or article of agreement to make a deed when the purchase-money should be paid. The title of the property was in me and my security. The title bond or article of agreement is not in my possession. It was given to Mrs. Jamison.

Ques. 7. State what collateral security you or said bank held at the time of receiving or discounting said notes, and what you or said

23 bank now holds on account of indebtedness, and annex to your answer a copy of said security.

Ans. My security was the title-bond to the real estate, the deed not having been made.

Ques. 8. Examine papers marked S. P. B., Exhibit A, and state whether or not you have had the original of the same or a similar paper in your possession; and if yea, when and from whom you received it, and what disposition you made of it.

Ans. No paper marked S. P. B., as Exhibit A, being presented to me, I can say nothing about it.

Ques. 9. Prior to the date of said account, and prior to receiving said notes, were you in correspondence with said Jamison concerning said settlement and concerning his said indebtedness; if so, annex to your answer each letter you have received from said Jamison relative to said settlement and said indebtedness.

Ans. If the settlement here alluded to be a settlement between Brown and Jamison, I can say that I know nothing about it, and I have not received and have no letters of Jamison relative to any such settlement.

Ques. 10. Who is the holder and owner of the three notes in suit?

Ans. John M. Jolley, as cashier of the Richland National Bank,
24 is the holder and owner of the two notes made by S. P. Brown to me of June 24th, 1869.

One at 30 days after date for..... $1,898 02
And one " 60 " " " " ..... $1,898 02

And is the holder for collection of one note same date, at 90 days, $898 01, the last made by said S. P. Brown, and payable to Sarah Jamison, and by her endorsed and handed to me.

Ques. 11. Has the plaintiff any authority from you to do any act in relation to said notes other than the authority incident to his position as cashier of said bank?

Ans. Not any.

Ques. 12. Were you at the time of endorsing said notes indebted to said bank? And if so, to what amount?

(Objection to the above question and the answer to the same, by pl'ff.)

Ans. The bank held my bill for one thousand dollars, and I had overdrawn my book ac't some three hundred dollars; but the proceeds of the discount I used to pay an indebtedness to Messrs. F. W. Strong, Son & Co.

Ques. 13. Do you know A. M. White? And if so, did you have any conversation with him concerning said settlement and said notes? State what that conversation was.

25 Ans. I am not acquainted with Mr. White, and never saw him to my knowledge, and never had a word of conversation with him about any such notes or settlement or about any other business.

Ques. 14. What knowledge had you at the time of receiving said notes that said notes had their origin in the settlement of an account between said Jamison and said Brown in relation to a voucher collected for said White?

Ans. None; but as stated in my reply to question No. 3.

Ques. 15. What knowledge had you at the time of receiving said notes, or since, that the amount of the same, and the value thereof was claimed by said White?

Ans. None, whatever.

Ques. 16. What knowledge had you at the time of receiving said notes, and what have you since acquired, as to the demand made by said White of said defendant of the amount of said notes?

Ans. None, whatever.

Ques. 17. What information did you give to any other officer of said bank at the time said notes were given or endorsed to said bank or before or since that time, as to the origin of said notes and as to the connection of said Jamison with the same?

26 Ans. Do not recollect what was said at the time, but presume I mentioned what Jamison said, as stated in my answer to question No. 3, about them being good and why he took them.

Ques. 18. Are the securities held by you or by said bank for the indebtedness of said Jamison good and sufficient to secure the payment of the said indebtedness?

Ans. The security is that above stated. I have not as yet conveyed the property, which is not now worth as much as the debt & accumulated interest. The bank holds no security but what appears on the face of the notes. Jamison is indebted to the bank on a note of his own, arising out of an entirely different transaction and at a different time, secured by individuals as security.

Ques. by pl'ff:

Ques. 1. Were the above transactions spoken of by you done in good faith and in the usual course of business?

Ans. They were.

Ques. 2. Is the indorsement of your signature on the notes in your handwriting?

Ans. It is.

Ques. 3. Do you know the handwriting of Sarah Jamison, and
27 is the name on the smaller note in her handwriting?

Ans. I know her handwriting, and the signature is hers.

Ques. 4. Was the small note transferred to A. L. Grimes as his property, and by him endorsed to J. M. Jolley for collection?

Ans. It was.

A. L. GRIMES.

I, Samuel E. Jenner, a notary public of the State of Ohio, in and for the county of Richland, do hereby certify that the above-named John M. Jolley and A. L. Grimes were by me first duly sworn to testify to the truth, the whole truth, and nothing but the truth; that the foregoing depositions by them respectively subscribed, were reduced to writing by me, and by said witnesses respectively subscribed in my presence, and were taken at the law office of Jenner and Jenner on the 24th day of March, 1870, in the city of Mansfield, Richland county, Ohio, in accordance with the agreement of Bartley and Stanton, attorneys for plaintiff, and Nath. Wilson, attorney for defendant hereto annexed. In witness whereof, I have hereunto set my hand and affixed my notarial seal this 24th day of March, A. D. 1870.

SAMUEL E. JENNER,
*Notary Public, Richland County, Ohio.*

28 Also the notes referred to in said depositions with the indorsements thereon as follows:

[See copies of notes filed with declaration & 1st & 2d amended declar'n.]

And the protests of said notes as follows:

[See copies of protests with original & amended declarations.[

And thereupon, and without offering any further testimony, the plaintiff rested; whereupon the counsel for the defendant prayed the court to instruct the jury that upon the whole evidence offered on the part of the plaintiff, if the jury shall believe the same, the plaintiff was not entitled to recover; to the granting of which instruction the plaintiff objected, and the court sustained the objection, and refused to instruct the jury as requested; to which refusal the defendant excepts and prays the court to sign and seal his first bill of exceptions, which is done accordingly, this thirty-first day of March, A. D., 1870.

D. K. CARTTER. [SEAL.]
*Chief Justice.*

29 *Defendant's bill of exceptions.*

J. M. JOLLY, CASHIER, PL'FF., *vs.* SAM'L P. BROWN, DEF'T. } 6086. At law.

Whereupon the defendant to sustain the issue on his part joined, offered and read in evidence the deposition of R. H. Roland, as follows:

Deposition of R. H. Roland in the case of John M. Jolly against S. P. Brown, in the supreme court of the District of Columbia, taken by consent and agreed to be read on the trial of the said case.

And the said R. H. ROLAND being duly sworn, deposes as follows: I reside in Mansfield, Ohio, and am the teller of the Richland National Bank of that place. The three notes of S. P. Brown which are the subject of this suit, and which are now shown to me, and each and all of them endorsed in the handwriting of A. L. Grimes. I am well acquainted
30 with the said Grimes, and know his handwriting well, having often seen him write. John M. Jolley, to whom the said notes are assigned by said endorsement, is the cashier of the said Richland National Bank. The two larger of said notes were discounted by the said Bank on the 3d day of July, 1869, and they now belong to the bank. They were discounted at the request of A. L. Grimes, and the proceeds were passed to the credit of the said Grimes on his private account. I have brought with me to this city the book in which was made the original entry of the discount of the two notes for $\$1{,}898\frac{2}{100}$ each, and am ready to produce it if required. The entry was made in the regular course of business by the book-keeper of the bank on the 3d July, 1869. The smaller of the three notes, to wit: The one for $\$898\frac{1}{100}$ has not been discounted by the bank, but is merely held for collection, having been deposited for that purpose by the said A. L. Grimes and for his private account. The proceeds of the two larger notes, discounted as above stated, were all checked out of the bank by the said Grimes, but at what exact time I cannot say.

31 Cross-examination by Nathaniel Wilson, attorney for defendant.

The two notes payable to the order of A. L. Grimes were discounted by the Richland National Bank, of which bank the said J. M. Jolley was at the time of said discount, and has since been and is now the cashier. Since said discount, said notes have been held and owned by said bank and are now held and owned by said bank. The note payable to Sarah Jamison was left with said bank for collection by said A. L. Grimes, and is not, and never has been, the property of said bank.

R. H. ROWLAND.

Sworn and subscribed to before me this 17 March, 1870.

R. J. MEIGS,
*Clerk.*

32 We agree that the above deposition, upon being sworn to before the clerk of the supreme court of the District of Columbia, shall be made in evidence in the trial of the above-entitled case, and no exception shall be taken thereto on the ground of any informality as to the mode or time of taking the same.

NATHAN WILSON,
*Att'y for Def't.*
BARTLEY & STANTON,
*For the Pl'ff.*

And the defendant then rested, and no further evidence being offered on the part of the plaintiff, the defendant prayed the court to instruct the jury as follows:

"It the jury shall find from the whole evidence, that, at the time of the institution of this suit, the Richland National Bank was the holder and owner of the promissory notes described in the first and second
33 counts *in the first and second counts* in the declaration, and that A. L. Grimes was the holder and owner of the note described in the third court of the declaration, the plaintiff is not entitled to recover."

(Rejected.)

"If the jury shall find, from the whole evidence, that the notes offered in evidence were endorsed to the plaintiff as the cashier of the Richland National Bank, by the payee of said notes, and that the title was not divested by any subsequent endorsement by said bank, or on account of said bank to said plaintiff, the plaintiff is not entitled to recover."

(Rejected.)

But the court refused to instruct the jury as prayed by the defendant, and instructed said jury that if they believed the whole evidence offered by the plaintiff and defendant, they should find for the plaintiff;
34 and to the refusal of the court to grant said instructions as prayed for by the defendant in his first and second prayers, as well as to the instructions granted by said court, the defendant excepts in law and prays the court to sign and seal this his second bill of exceptions, which is done accordingly this thirty-first day of March, A. D. 1870.

D. K. CARTTER, [SEAL.]
*Chief Justice.*

35 Proceedings before the circuit court of the District of Columbia.

*Verdict of the jury.*

THURSDAY, *March* 31, 1870.

The court met pursuant to adjournment, Chief Justice Cartter presiding.

JNO. M. JOLLEY, CASH'R, PL'FF,
*vs.*
SAMUEL P. BROWN, DEF'T. } At law. No. 6086.

And now come, as well the plaintiff as the defendant, by their respective attorneys, and a jury of good and lawful men of this district, to wit, Patrick Murry, George W. Stroud, T. D. Daley, John R. Cronin, James Forrester, Thomas E. Jacobs, Lewis F. Whitney, Robert J. Nicholson, John Coulson, S. T. Tune, Edward A. Dickens, and J. L. Kenard, who being sworn to try the issues above joined upon their oath, say they find the same in favor of the plaintiff, and that the money
36 payable to him by reason of the premises is the sum of four thousand six hundred and ninety-four dollars and five cents, principal of the three notes sued on, with interest on the first of them for $1,898 02 cents from July 24, 1869, and on the second for $1,898 02 from August 24, 1869, and on the last note $898 01 from September 24, 1869, besides costs. Therefore it is considered that the plaintiff recover against said defendant said sum of $4,694 05, with interest as aforesaid, and $ costs of suit, and have execution thereof.

*Motion for a new trial.*

MONDAY, *April 4th*, 1870.

The court resumes, pursuant to adjournment, Chief Justice Cartter presiding.

The defendant, by his attorney, Mr. Wilson, moves the court for a new trial upon exception to the rulings of the court, which exceptions are signed, sealed, and made part of the record, and files the following paper:

37 The defendant moves for a new trial in the above-entitled cause—

1st. Because the verdict was against the evidence.

2d. Because of exceptions taken at the time of trial.

3d. Because the court refused to grant the instructions prayed for by the defendant.

4th. Because the court erred in its instructions to the jury.

NATH'L WILSON,
*Att'y for Def't.*

38 Proceedings in the general term.

MONDAY, *May* 9, 1870.

Session resumed, pursuant to adjournment.

Present, Chief Justice Cartter and Justices Olin & Fisher.

JOHN M. JOLLEY, PL'FF,
*vs.*
SAMUEL P. BROWN, DEF'T. } 6086. At law.

And now again come here as well the *the* plaintiff, by his attorney, Mr. Stanton, as the defendant, by his attorney, Mr. Wilson, and thereupon, because it seems to the court that there is no error in the record and judgment of the circuit court, it is considered that its judgment be, and the same is hereby, affirmed, and that the plaintiff recover against the defendant the costs of the cause in this court, to be taxed by the clerk, and have execution thereof, and also that he have execution of the said judgment of the circuit court.

39 In the supreme court of the District of Columbia, the 16th day of May, 1870.

SAMUEL P. BROWN, PL'FF,
*vs.*
JOHN M. JOLLY, CASH'R, &C., DEF'T. } At law. No. . In error.

Know all men by these presents, that we, Samuel P. Brown and George H. Plant and Austin P. Brown, are bound unto the above-named John M. Jolly in the sum of eight thousand dollars, to be paid to the said John M. Jolly, his executors or administrators; to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly, by these presents, sealed with our seals and dated this 16th day of May, 1870.

Whereas the above-named Samuel P. Brown hath prosecuted a writ of error to the Supreme Court of the United States to reverse the judg-

ment rendered in the above suit by the said supreme court of the District of Columbia:

Now, therefore, the condition of this obligation is that if the above-named Samuel P. Brown shall prosecute his said writ of error to effect, and answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

S. P. BROWN. [SEAL.]
GEORGE H. PLANT. [SEAL.]
H. P. BROWN. [SEAL.]

Sealed and delivered in presence of—
A. B. WOLFE.

The foregoing bond is hereby approved this 17th day of May, A. D. 1870.

D. K. CARTTER.

40 *Clerk's certificate.*

DISTRICT OF COLUMBIA, *to wit:*

I, R. J. Meigs, clerk of the supreme court *of the supreme court* of the District of Columbia, do hereby certify that originals of which the foregoing writings are true and complete copies are on file and of record in the clerk's office of said court, and that said originals together constitute the record of the proceedings of said court in a certain cause therein depending and lately decided, entitled John M. Jolley, cashier, pl'ff, vs. Samuel P. Brown, defendant. At law. No. 6086.

In testimony whereof I hereto subscribe my name and affix the seal of said court this 20 day of December, 1870.

[SEAL.] R. J. MEIGS, *Clerk.*

(Indorsement on cover:) No. 433. Samuel P. Brown, plaintiff in error, vs. John M. Jolly, cashier, &c. Dist. of Columbia sup. court. Filed 20th December, 1870.

# SUPREME COURT OF THE UNITED STATES.

## No. 218.

SAMUEL P. BROWN, PLAINTIFF IN ERROR,

vs.

JOHN M. JOLLY, CASHIER, &c.

CERTIORARI AND RETURN.—FILED NOVEMBER 3, 1871.

1 THE UNITED STATES OF AMERICA, *ss:*

[SEAL.] The President of the United States of America to the judges of the supreme court of the District of Columbia, greeting:

Whereas in a certain suit in said supreme court, between John M. Jolly, cashier, &c., plaintiff, and Samuel P. Brown, defendant, which suit was removed to the Supreme Court of the United States, by virtue of a writ of error, agreeably to the act of Congress in such case made and provided, a diminution of the record and proceedings of said cause has been suggested, to wit:

"That, in the transcript filed in this court, the endorsement of A. L. Grimes on the note for 898.01 is in blank, as will be seen at page 6 of the printed transcript, whereas in the original record the endorsement of said A. L. Grimes on said note is filled up with the words,

2 "pay J. M. Jolly, cash., or order," the said words being erroneously omitted in the said transcript:

You, therefore, are hereby commanded that, searching the record and proceedings in said cause, you certify what omissions and errors you shall find to the said Supreme Court of the United States, so that you have the same, together with this writ, before the said Supreme Court forthwith.

Witness the Honorable Salmon P. Chase, Chief Justice of said Supreme Court, the first Monday of December, A. D. 1870.

D. W. MIDDLETON,
*Clerk Supreme Court U. S.*

Issued 28th October, 1871.

CLERK'S OFFICE, SUP. C'T, D. C.,
*Nov'r 1st, A. D.* 1871.

In obedience to the foregoing certiorari I have examined the endorsement on the note referred to in said writ, and find it to be as follows:

(In red:) "8522.
"Due Sept. 25th."

3

"~~Pay W. S. Huntington, C.,~~
or ~~order, for collection,~~
~~ac't Richland Nat'l Bank.~~
"~~JNO. M. JOLLEY~~, *Cas.*

"SARAH JAMERSON.

"Pay Jno. M. Jolley, cash'r, or order.
"H. L. GRIMES."

DIST. OF COLUMBIA, *to wit:*

I, Return J. Meigs, clerk of the supreme court of the Dist. of Columbia, hereby certify that I have examined the note referred to in the foregoing writ of certiorari, and find the endorsement on the same to be in the words above quoted, and that the said note and endorsement is on file and of record in said supreme court of the Dist. of Col'a.

Witness my hand and the seal of the said supreme court of the Dist. of Columbia, this 1st of November, 1871.

[SEAL.] R. J. MEIGS, *Clerk.*

(Indorsed:) No. 218. Sup. Court U. S. December term, 1870. Brown vs. Jolly. Certiorari & return. Filed 3d November, 1871.

CLERK'S OFFICE, SUP. C'T, D. C.,
*Nov'r 1st, A. D.* 1871.

In obedience to the foregoing certiorari I have examined the endorsement on the note referred to in said writ, and find it to be as follows:

(In red:) "8522.
"Due Sept. 25th."

3

"~~Pay W. S. Huntington, C.,~~
or order, ~~for collection,~~
ac't Richland ~~Nat'l Bank.~~
"~~JNO. M. JOLLEY~~, *Cas.*

"SARAH JAMERSON.

"Pay Jno. M. Jolley, cash'r, or order.
"H. L. GRIMES."

DIST. OF COLUMBIA, *to wit:*

I, Return J. Meigs, clerk of the supreme court of the Dist. of Columbia, hereby certify that I have examined the note referred to in the foregoing writ of certiorari, and find the endorsement on the same to be in the words above quoted, and that the said note and endorsement is on file and of record in said supreme court of the Dist. of Col'a.

Witness my hand and the seal of the said supreme court of the Dist. of Columbia, this 1st of November, 1871.

[SEAL.] R. J. MEIGS, *Clerk.*

(Indorsed:) No. 218. Sup. Court U. S. December term, 1870. Brown vs. Jolly. Certiorari & return. Filed 3d November, 1871.